

1 upon these standards. In the alternative, Apple asks for an order restricting the attorney from
2 engaging in particularly abusive deposition acts, including:

- 3 • belligerent and insulting treatment of witnesses;
- 4 • repeated interruptions of witnesses and counsel;
- 5 • unilaterally terminating a deposition because he disliked a witness's answers;
- 6 • asking the same question without modification despite requests for clarification or
7 repetition of answers by witnesses;
- 8 • refusing to permit a witness to leave a deposition despite exceeding the seven hour time
9 limit in the Federal Rule by nearly forty minutes;
- 10 • uncivil treatment of opposing counsel;
- 11 • engaging in lengthy colloquy on the record; and
- 12 • disregarding other requirements imposed by the Federal Rules of Civil Procedure.

13 Apple characterizes the attorney's conduct as nothing less than "inappropriate," "abusive,"
14 "harassing," "contemptuous," and "mocking." Samsung, to put it mildly, objects. Relying upon the
15 fact that the majority of the deponents are Apple's patent lawyers and agents "who are accustomed
16 to the adversarial process," techniques taught in deposition textbooks, and the exacting standards
17 applicable to a disqualification motion, Samsung denies that Apple has shown "compelling"
18 grounds for interfering with its due process rights. At oral argument, Samsung even went so far as
19 to deny – repeatedly – that the attorney had done even one thing wrong in his actions towards
20 either opposing counsel or witnesses.

21 And so the court confronts a circumstance in which two sophisticated parties, represented
22 by equally sophisticated and reputable law firms, confront the identical set of actions and yet urge
23 diametrically opposite conclusions. In support of their respective positions, both sides file
24 transcript after transcript. Both sides encourage the review of deposition DVD after deposition
25 DVD. And yet, remarkably, neither side confronts or even truly acknowledges evidence
26 undermining its preferred conclusion, in textbook examples of what psychologists refer to as
27 "confirmation bias." Nor does either side point to even one instance in which it followed Judge
28 Koh's explicit instructions for lead trial counsel to meet in person before imposing on the court
what is essentially a motion to behave.

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In light of this unfortunate record of non-compliance with Judge Koh's instructions, the court denies Apple's motion. These instructions were not optional, and at no point have the parties sought relief from these instructions even after the undersigned reminded them of that opportunity. The court must therefore decline to share the conclusions it has reached about what is depicted in the transcripts and DVDs stacked on the court's desk.

Dated: November 16, 2011



PAUL S. GREWAL
United States Magistrate Judge